

# Testimony from Commissioner Mark Bernstein and Commissioner Valerie Simmons



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STATE OF MICHIGAN  
DEPARTMENT OF CIVIL RIGHTS  
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Mr. Ron D. Robinson  
Assistant Attorney General  
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Cadillac Place  
3030 W. Grand Blvd., Suite 10-200  
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Dear Mr. Robinson:

We want to thank you for consulting with us this week regarding the role of the Civil Rights Commission and Department of Civil Rights relative to the Michigan Civil Rights Initiative (MCRI).

Our understanding of the position of the Attorney General regarding the role that each of these entities and related individuals may play with respect to the MCRI is outlined below:

## 1. Civil Rights Commission & Commissioners

Commissioners of the Civil Rights Commission and Women's Commission (collectively "Commissioners"), acting individually or as a body, may advocate for or against the MCRI in their role as Commissioners or as a Commission. Section 169.257 of the Michigan Campaign Finance Act excludes "[t]he expression of views by an elected or *appointed public official who has policy making responsibilities*" from the prohibition of political advocacy by public bodies. Michigan Campaign Finance Act, Section 57, (1)(a).

Therefore, the law permits the recent resolution passed by the Commission opposing the MCRI. Additionally, the law permits a Commissioner, acting as a Commissioner, to advocate for or against the MCRI.

## 2. Department of Civil Rights & Staff

**Acting in Official Capacity during Actual-duty Time:** Both the Department of Civil Rights, the staff of the Department of Civil Rights and the staff of the Michigan Women's Commission (collectively "Staff"), during "actual-duty time", are precluded from advocacy activities in support of or opposition to the MCRI. The Civil Service Rules clearly preclude these activities. Michigan Civil Service Rules, 1-12.6. However, according to the Michigan Campaign Finance Act, the Staff, during "actual-duty time", may engage in "[t]he production or dissemination of factual information concerning issues relevant to the function of the public body." Michigan Campaign Finance Act, Section 57(1)(b). Therefore, resources of the Department and staff may engage in the dissemination of "factual information" regarding issues of relevance to the MCRI. Additionally, the resources of the Department and Staff may engage in the dissemination of "factual information" regarding the position of the Commission and/or Commissioners regarding the MCRI even if such positions involve explicit expressions of support of or opposition to the MCRI.

Article 6 of the Elliott-Larson Civil Rights Act (ELCRA) provides further authority to the Department and its Staff, acting in their official capacity, to engage in the dissemination of information relevant to the MCRI. The ELCRA states that the "[c]ommission shall prepare an annual written report for the governor. The report may contain recommendations adopted by the commission for legislation or other action necessary to effectuate the purposes and policies of this act." ELCRA, Section 601(1)(e).

**Acting as Private Citizens ("Off Duty"):** The Civil Service Commission Rules distinguish between the "actual-duty time" and "off duty" political activities of state classified employees. A state classified employee may engage in political activities if he or she is "off duty". The Civil Service Rules permit employees in the classified service to engage in political activities. Michigan Civil Service Rules, 1-12.4. Furthermore, statements clearly indicating an expression of personal opinion by a state classified employee are permissible.

By way of illustration, we identified the following actions and activities to be permissible under relevant Michigan laws and rules:

- The Commission or Michigan Women's Commission may express opposition of or support for the MCRI in the form of a Commission resolution.
- The Department and its Staff may disseminate the position of the Commission or Commissioners regarding the MCRI.
- The Department and its Staff may conduct research and disseminate factual statements regarding factual issues related to the MCRI.
- Staff may express personal views in support of or opposition to the MCRI.

- The Commission may create a Subcommittee to address and identify further actions with regard to its opposition to the initiative.

We intend to proceed in accordance with this interpretation and application of relevant state laws and rules. Please contact us immediately if our understanding of these laws and rules is inconsistent with that of the Attorney General.

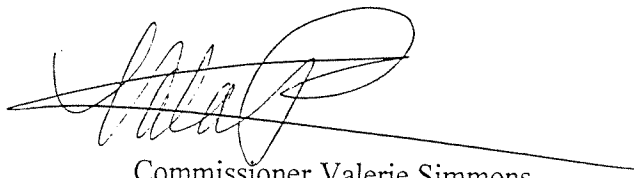
While our understanding outlined in this letter focuses on the MCRI, this interpretation and application of relevant state laws covers political activities that may arise in the future.

As always, thank you for your work on this matter.

Sincerely,



Commissioner Mark Bernstein



Commissioner Valerie Simmons

cc: Gary Torgow  
Kelly Keenan  
Linda Parker